

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable John L. McClellan, Chairman
Intelligence Operations Subcommittee
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Reference is made to my letter of 30 April 1974 concerning the adverse impact upon the operation of this Agency of certain provisions of S. 2543 amending the Freedom of Information Act.

As a result of your efforts the language of the bill has been adjusted and a comment along the lines of the enclosed is being considered for insertion in the Committee report.

Under the circumstances, these changes substantially meet our needs and we deeply appreciate your assistance in this important matter.

Sincerely,

W. E. Colby
Director

Enclosure

This letter was never sent

By statute certain special categories of sensitive information-- Restricted Data (42 U.S.C.A. 2162), Communication Intelligence (18 U.S.C.A. 798), and Intelligence Sources and Methods (50 U.S.C.A. 403(d)(3) and g) must be given special protection from unauthorized disclosure. These categories of information have been exempted from public inspection under Section 552(b)(3), "specifically exempted from disclosure by statute," and (b)(1), "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." The Committee believes that these categories of information will be adequately protected under S. 2543. If such information is ever subject to court review, the review will be conducted in camera under the procedures established in the bill for information exempt under Section 552(b)(1). It is also expected that in such cases the court will recognize that such information is inherently sensitive and that the latitude for discretion permitted under Executive Order 11652 does not apply to such information.

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OLC 74-0836

30 April 1974

Honorable John L. McClellan, Chairman
Intelligence Operations Subcommittee
Committee on Appropriations
United States Senate
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Dear Mr. Chairman:

This letter responds to your request for comments on the possible impact upon the operations of this Agency of S. 2543 which amends the Freedom of Information Act (5 U.S.C. 522).

Presently, this Agency's records are for the most part not available for public inspection because the Act exempts, among other things, matters that are:

"(b)(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(3) specifically exempted from disclosure by statute;"

Although S. 2543 retains these general exemptions, it adds a new provision which would permit an in camera court review of any or all records to determine whether they shall be subject to public inspection. This provision appears to be designed to overrule a Supreme Court decision that the contents of records withheld under exemption (b)(1) are not reviewable by the courts (Environmental Protection Agency v. Mink, 93 S. Ct. 827 (1973)).

The National Security Act of 1947 provides:

"... That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;" (Sec. 102(d)(3))

This language is designed to protect the lives and welfare of sources of sensitive foreign intelligence information and to protect against the compromise of technical collection efforts.

I do not believe that the nation's interest would best be served by legislation which would make it possible for the most sensitive of Agency records to be subject to court review as a result of a suit by an individual, who under the statute may not even be a U.S. citizen, for their public inspection. It is recommended that information which is made inherently sensitive by statute be exempted from the court review provisions of S. 2543. Suggested language accomplishing this for three categories of sensitive information recognized by statute (Intelligence Sources and Methods, Communications Intelligence and Restricted Data) is enclosed.

If S. 2543 or similar legislation is favorably considered, it is hoped that you would be able to support appropriate exemption for this Agency as proposed.

Sincerely,

/s/

W. E. Colby
Director

Enclosure

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AMENDMENT TO S. 2543 (Committee Print, January 29, 1974)

The added language is underlined and would be inserted at line 16, page 3:

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall consider the case de novo, with, except for matters withheld under section 552(b)(3), involving, but not limited to, Restricted Data, intelligence sources and methods, and communication intelligence under sections 2162 of Title 42, 403(d)(3) and 403g of Title 50, 798 of Title 18 and 73 Stat. 64, such in camera examination of the requested records as it finds appropriate to determine whether such records or any part thereof may be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.